

# United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Philip G. Reinhard	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	03 C 50018	DATE	11/20/2003
CASE TITLE	LUND vs. HESSER		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

## MOTION:

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## DOCKET ENTRY:

- (1) ☐ Filed motion of [ use listing in "Motion" box above.]
- (2) ☐ Brief in support of motion due \_\_\_\_\_.
- (3) ☐ Answer brief to motion due \_\_\_\_\_. Reply to answer brief due \_\_\_\_\_.
- (4) ☐ Ruling/Hearing on \_\_\_\_\_ set for \_\_\_\_\_ at \_\_\_\_\_.
- (5) ☐ Status hearing[held/continued to] [set for/re-set for] on \_\_\_\_\_ set for \_\_\_\_\_ at \_\_\_\_\_.
- (6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on \_\_\_\_\_ set for \_\_\_\_\_ at \_\_\_\_\_.
- (7) ☐ Trial[set for/re-set for] on \_\_\_\_\_ at \_\_\_\_\_.
- (8) ☐ [Bench/Jury trial] [Hearing] held/continued to \_\_\_\_\_ at \_\_\_\_\_.
- (9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]  
☐ FRCP4(m) ☐ General Rule 21 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).
- (10) ☒ [Other docket entry] For the reasons stated on the reverse Memorandum Opinion and Order, this case is dismissed in its entirety for lack of subject matter jurisdiction.

- (11) ☒ [For further detail see order on the reverse side of the original minute order.]

<input type="checkbox"/> No notices required, advised in open court. <input type="checkbox"/> No notices required. <input checked="" type="checkbox"/> Notices mailed by judge's staff. <input type="checkbox"/> Notified counsel by telephone. <input type="checkbox"/> Docketing to mail notices. <input checked="" type="checkbox"/> Mail AO 450 form. <input checked="" type="checkbox"/> Copy to judge/magistrate judge.	courtroom deputy's initials  /SEC	U.S. DISTRICT COURT 2003 NOV 20 PM 3:38	number of notices NOV 20 2003 date docketed docketing deputy initials 11-20-03 date mailed notice mailing deputy initials	Document Number 25
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## MEMORANDUM OPINION AND ORDER

Plaintiffs, Teresa J. Lund and Trent R. Lund, filed a three-count complaint against defendants, Hesser Olds, Inc. alleging common law fraud, malicious prosecution, and abuse of process. Plaintiffs claim diversity jurisdiction in this court pursuant to 28 U.S.C. § 1332(a). Before the court is defendant's renewed motion to dismiss for lack of subject matter jurisdiction. Though the party seeking to invoke federal court jurisdiction bears the burden of proving jurisdiction, see American Bankers Life Assurance Co. v. Evans, 319 F.3d 907, 909 (7<sup>th</sup> Cir. 2003), plaintiffs have not filed a response. Defendants' motion produces evidence that the damages sought by plaintiff are \$3544.27 for compensatory damages representing attorney's fees incurred in defending a state court action, punitive damages in the amount of \$75,000, and compensatory damages for abuse of process of \$100,000. Federal courts apply the "legal certainty" test to assess whether the amount in controversy is met. Smith v. Am. Gen. Life & Accident Ins. Co., 337 F.3d 888, 892 (7<sup>th</sup> Cir. 2003). "Under the legal certainty test, courts will find federal jurisdiction on the basis of the plaintiff's complaint unless it appears 'to a legal certainty that the claim is really for less than the jurisdictional amount.'" Id. Viewing the (surprisingly) un rebutted evidence submitted by defendants, the court finds it is a legal certainty that less than the jurisdictional amount is in controversy. It is not possible for an award of punitive damages and an award on the abuse of process claim to be substantial enough to meet the jurisdictional amount when combined with any possible recovery for the damages based on attorney's fees.

Additionally, the court finds that the complaint fails to properly allege diversity of citizenship. It alleges plaintiffs are residents of Illinois, but residence and citizenship are not synonyms and it is citizenship that matters for diversity jurisdiction. Myerson v. Harrah's East Chicago Casino, 299 F.3d 616, 617 (7<sup>th</sup> Cir. 2002). The complaint also alleges defendant is a Wisconsin corporation, but does not allege defendant's principal place of business, which is required because a corporation is a citizen of both the state of its incorporation and the state of its principal place of business. 28 U.S.C. § 1332 (c)(1).

For the foregoing reasons, this case is dismissed in its entirety for lack of subject matter jurisdiction.

**United States District Court**  
**Northern District of Illinois**  
**Western Division**

Teresa J. Lund, et al.

**JUDGMENT IN A CIVIL CASE**

v.

Case Number: 03 C 50018

Hesser Olds, Inc.


- ☐ Jury Verdict. This action came before the Court for a trial by jury. The issues have been tried and the jury rendered its verdict.
- ☒ Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS HEREBY ORDERED AND ADJUDGED that this case is dismissed in its entirety for lack of subject matter jurisdiction.

FILED-WO  
2003 NOV 20 PM 3:37  
U.S. DISTRICT COURT

Michael W. Dobbins, Clerk of Court

Date: 11/20/2003

  
Susan M. Wessman, Deputy Clerk